



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Appeal 47 of 2006**

**MARY WAMBUI MITHAMO.....APPELLANT**

**VERSUS**

**JANE MABUTI KANGANGI.....RESPONDENT**

**JUDGMENT**

This is an appeal against order of *Resident Magistrate at Kerugoya made on 14/7/2006 in Succession Cause No. 28 of 2005*. There is filed original Memo of Appeal filed on 20/7/2006 with 4 grounds of appeal.

On 30/11/2006 the appellant filed a supplementary record of Appeal adding ground numbered 1 A. According to the record on 14/7/2006 before the court was petitioner whose name is not disclosed and no Respondent. The court allowed Application and the grant was confirmed and the estate was distributed. Jane Mabuti Kangangi took 1.5 acres and Mary Wambui Mithamo took 2.5 acres.

From the record Jane Mabuti Kangangi was the sister of the appointed Administrator who died on 28/2/2006. Although the deceased had wife Mary Wambui Mithamo his sister Jane Mabuti Kangangi high handedly

applied to stand as her deceased brother substitute and distributed the estate of Priscilla Wambui Kangangi herself taking the said 1.5 acres and her brothers widow taking 2.5 acres. The court granted her application dated 28/3/2006.

By Application dated 7/7/2006 the Respondent made an application for confirmation of the grant proposing to distribution as aforesaid and the court confirmed on 14/7/2006 as proposed by Respondent. It was not until 20/7/2008 did the Appellant filed this appeal. The amended petition complains that the Trial Magistrate failed to give appellant opportunity to file her protest to confirmation. This shows that the Appellant was before the court on 14/7/2006 but there is no record to show that she protested verbally or that she asked for time to file protest instead it is recorded that there was no objection.

I have also noted that the estate being of the deceased mother of Jane Mabuti Kangangi and deceased son Eliud Mithamo Kangangi the two were the beneficiaries of the piece of land. Also having considered the prayers of the Appellant and her proposals for redistribution of the land, I am of the view that the Appellant appreciates the inheritance of the Respondent. What she objects is the distribution.

It is my finding that the difference in her proposals and that of Respondent is not very different. I see no need to redistribute the estate. The orders made by the Resident Magistrate are applied. The appeal is dismissed with no order as to costs.

Dated this 7<sup>th</sup> May, 2008.

**J. N. KHAMINWA**

**JUDGE**

**7/5/2008**

**Khaminwa- Judge**

**Njue – Clerk**

**Mr. Maina Kagio – present**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**